Irrigation Bill Select Committee Report and move that the Bill as amended by the Committee be taken up into consideration.

Mr. T. K. Nayar:—I second it.

Motion put and carried.

The Cochin Tenancy and Kudiyirippu Bill.

Mr. T. A. Ramachandra Ayyar:—I beg to move that the Cochin Tenancy and Kudiyiruppu Bill be withdrawn.

Mr. K. Ayyappan:—I beg to second it.

Motion put and carried.

The Musalman Charitable Endowment Bill.

Mr. K. M. Ibrahim:—Sir, I move for leave to introduce the Mussalman Charitable Endowment Bill.

Mr. T. A. Ramachandra Ayyar:—I second it.

Motion put and carried.

President:—Now we can go on with the discussion of the resolutions.

Resolutions.

No. 1:—Transfer of Judges of the Chief Court to the Executive depts.

Mr. Thomas Manjuran:—The resolution as amended reads thus:—"*This Council recommends to the Government that in future Judges of the Chief Court should not be transferred to the executive departments of the State*".

During the course of the debate yesterday it was made clear that the reference was to the possibility of a Judge of the Chief Court being promoted as the Diwan of the State and I am confining my statements entirely to the resolution as it stands and with particular bearing on this aspect. I was observing yesterday that the Government are as well aware of the absolute necessity of preserving the integrity and independence of the judicial officers in the State as any Hon'ble Member in this House. It is only in very exceptional circumstances and at very long intervals, if at all, that a Judge of the Chief Court has been promoted to an executive place. When I say 'promoted', I am advisedly using that word because any other appointment than the one referred to yesterday will not really be a promotion for a Judge of the Chief Court so that if a Judge of the Chief Court is appointed as the Diwan Peishkar that cannot be considered to be a promotion and the arguments advanced yesterday cannot apply to such a case. Even such cases are very rare. With regard to the promotion of the Chief Court Judges to the highest executive post, as I have already stated yesterday, there may have

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been just a few instances and they were few and far between. To my memory three successive Chief Judges have recently retired one after another as Judges. I can only say that the Government has always endeavoured not to disturb the Judges of the Chief Court. The Hon'ble Mover of the resolution may rest assured that the Government is well aware of the principle underlying the resolution and will adhere to it as far as possible.

Mr. P. Kumaran Ezhuthassan:— Mr. President, Sir, it has been conceded that the independence and integrity of the judiciary in general has to be upheld and upheld at all costs. This is more so in the case of the highest tribunal of the land. Speaking on this resolution the Hon'ble Law Member was adverting to the instances of the kind we had in the past. He was attempting to make out that the action taken by the Government in the past in this behalf has not been anything to jeopardise the position viz., the upkeep of the integrity and the independence of the judiciary. The Hon'ble Government Advocate seems to forget that there is an infinite future before us. If our experience of the past has been all good we do not know what our experience of the future will be. The resolution is intended solely for the future and not for the past. The desire and the consequent attempt to better ones own position is one of the most pardonable faults of ones life. It is a very natural desire for a man, be he an executive officer or a judicial officer, to better and improve ones position in life. Nobody would blame a Judge of the Chief Court in aspiring for something which is bigger to his eyes. Nobody would blame a man for that. If there is any the slightest possibility of a Judge of the Chief Court expecting and attempting to get at something higher according to him we can more or less infer that that desire in his mind may often stand in the way of his discharging the duties of his position in the same manner as he would otherwise do. I am not making reflections upon anybody. I am only making a most casual observation upon human nature. So it is up to a civilised Government to see that any chance of the slightest deviation from the path of virtue and judicial integrity and independence is scrupulously avoided. It is with that object in view that this resolution has been tabled and it is again with that object in view that this resolution has been amended with the leave of the President by the Hon'ble Member who moved the resolution. It is but a fear—and a legitimate fear—that if there is this possibility men may not be what they ought to be. In discussing another resolution instances of the judiciary of England have been placed before this House. It will be a fine day for Cochin to see the judiciary of our State and more so the highest tribunal of the land functioning in the manner in which it was stated to be in the United Kingdom. Therefore, it will not be too

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much for the non-official members of this House to ask the Government to see that all sorts of temptations are removed from the way of the persons who adorn the Chief Court Bench. The Hon'ble Government Advocate was saying that the only possible chance of promotion of a Chief Court Judge is to that of the Diwanship of Cochin and he was drawing pointed attention to the fact that if a Puisne Judge of the Chief Court was to be drafted on to the executive for example as the Diwan Peishkar as we had an instance before, that is even beyond the scope of this resolution. I submit that it also is certainly within the scope of the resolution and even that case is contemplated by the resolution. No Judge of the Chief Court, be he a Puisne Judge or the Chief Justice, be drafted on to the executive line, because these hopes may stand in the way of the members of the highest tribunal of the land functioning quite independantly of all, be he big or small, King or peasant. It is with that object that the resolution has been tabled and I hope and trust that the Government will accept it and see that the temptations are removed from the way of those Judges.

Mr. A. Sankara Poduval:— While I appreciate the principle underlying this resolution, I am afraid that so far as Cochin is concerned we cannot lay down any such hard and fast rule, and so I am constrained to oppose the Motion. Many years ago (during the regime of His Highness the abdicated Maharajah), this question came up for consideration and I am reliably informed that there was a proposal that the salary of the Chief Judge of the Cochin Chief Court be raised to that of the Diwan. If public opinion that was current at that time, could be relied upon, it was well known, that the principle involved was accepted by the Madras Government when a reference was made to it, and the proposal was dropped on two grounds: first, the financial stringency in the State, and secondly that in a small State like Cochin it was not possible to lay down any hard and fast rule like that. All the same, the Madras Government seems to have given the valuable opinion that the principle may be kept in view and that in exceptional cases when exigencies of service necessitate it, a deviation will not be out of place. My present considered opinion also is more or less the same. In a small State like Cochin there may be occasions when it may be necessary to engraft a Judge of the Chief Court into the revenue department and in a State like Cochin where the revenue law is very complicated, a sound knowledge of law would be useful. Our practical experiences, of the two or three Diwan Peishkars, thus appointed has been very encouraging. Land tenure and the revenue system in the Cochin state, I may say, is comparatively more complicated than elsewhere. The principle is all right. I do not mean to say that we should overlook the

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principle. There may be occasions where we cannot afford to have too many in the judicial department to be transferred to the Revenue Department. So far as the transfer of a Judge of the Chief Court as Diwan is concerned, no doubt, the Cochin State Manual says, for reasons which I am not able to appreciate, that the Judges of the Chief Court transferred as acting Diwans were not very successful. Although the Cochin State Manual is published under authority of the Cochin Government, I beg to refute that statement. There have been, to my knowledge, some of these officers appointed temporarily or for acting periods from among the Judges of the Chief Court who proved very successful. After all, it seems to me, that the argument, based on the ground of temptation is entirely too trivial to be considered. I expect every officer of the state; both in the executive department as well as the judicial department, to be veryhonest and there is no fear of their integrity being tampered with, because there is this hope in prospect of their getting into the executive department. That is not the point. The suggestion, as I referred to in the opening of my speech, made by the then Maharajah was to equalise the pay of the Chief Judge with that of the Diwan. That is to say, there should be no difference in salary and status. We expect all our revenue officers to be very honest and very straight forward in service and not at all swayed by any sort of temptation, as we expect of our higher officers in the judiciary. So that, I quite agree with the Hon'ble Government Advocate, that while keeping the principle alive, it would not be adivsableto have a resolution like this passed by the Council. Upon these grounds I am constrained to oppose this resolution.

Mr. P. S. Kesavan Nambudiri.—Sir, one of the essential requisites of a civilised state is the existence of a judiciary efficient and independent of the executive. In matters of appointments, promotions, transfers and so on all the powers should be vested in that department itself. But what is the state of affairs here? All the judicial appointments are made on the recommendation of the Diwan. The other day, the Hon'ble Member for Law and Justice was openly telling us that by the direct recruitment to the higher grades in the judiciary, as for example to the post of a District Judge, the District Munsiffs, and those in the lower ranks are in no way prejudiced because they may be promoted as Anchal Superintendent and Registration Superintendent and so on. And the District Judges in their turn may be looking up to the vacancies of the Diwan Peishkar, of the Director of Public Instruction or the Excise Commissioner and so on; and the Judges of the Chief Court will be yearning to step into the shoes of the retiring Diwans. (Hear, hear). These are the judicial ambitions in our

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State. In short a public officer, including a judicial officer in our State, is somewhat in the role of a domestic servant. One day he may be a menial servant, the next day a cook, then a tutor and afterwards a manager. It is to these changes and especially in the judicial department that I take the strongest objection. We are not to suppose that the courts are existing for administering justice between private parties only. Sometimes we may have to question the correctness or the validity of an executive order, for instance, the order of the Diwan. We take the matter to the court of law and who is the presiding officer there? He is appointed on the recommendation of the Diwan and he is looking up to him for further promotions. In short he is a creature of the executive and you know that it is natural that all creatures would be loyal to the creator. And how can you expect impartial justice from such a tribunal? Therefore, it is rightly said that a judge, like Ceasar's wife, should be above suspicion. Moreover, when our State is growing in importance as a maritime State and with her intimate relations with foreign States and Nations very many important questions of inter-statal and international importance will have to be decided by our tribunals and unless we bring our judiciary into line with those existing in other civilised States and Nations I am afraid our judicial verdicts may not command such respect and validity in other States. Therefore, I will strongly support this resolution. I ought to have opposed the amendment also. It is my firm conviction that not a single officer in the Judicial Department should be promoted or transferred to any other department. But that is not within the scope of this resolution. Anyhow, so far as it goes I support this reslution very strongly.

Rama Varmha Tampuran:—I endorse every remark made by the Hon'ble Member for Trichur on this discussion. In a small State like Cochin it is impossible to have a hard and fast distinction between the two sets of officers. In British India—I don't think the Hon'ble Member for Kattoor was correctly informed when he said that the appointments in the judiciary are not made by the Government—all the senior appointments in the British judiciary are made by the respective local Governments and the Central Government and not by the High Courts.

Mr. P. S. Kesavan Nambudiri:—They are on the recommendations of the High Court.

Rama Varmha Tampuran:—It is true the High Court recommends but the Government decides.

Dr. A. R. Menon:—Generally those recommendations are accepted.

Rama Varmha Tampuran:—I know instances where such recommendations have not been accepted. Here also whenever a

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vacancy arises the chief executive officer of the State consults the Chief Court, though informally. Similarly there may be consultations, between the Government and the High Court in the Provinces. It is not at al correct to say that it is the High Court that makes the appointments.

Again, in British India transfers between District Judges and Collectors are the occurrences of every day. There they have several distinguished officers who have worked equally well as District Collectors, as Secretary to the Government and as High Court Judges. Even today I can cite the instance of a High Court Judge who has acted previously as a Secretary to the Government, as a Collector and in several other executive offices. I can quote concrete instance of a Judge who is today in the High Court and who has held distinguished appointments in the executive line. Even in a large Presidency like that, that is the practice. Therefore, there is nothing strange or to wonder at, that such a practice exists today in the Cochin State. Such a practice has to continue not only here but everywhere. That does not cast any aspersion either on the judiciary or on the executive.

Mr. K. Ayyappan:—Is not the Collector a semi-judicial officer?

Rama Varmha Tampuran:—He is a District Magistrate. Not a civil judicial officer. There is a vast difference between a criminal judicial officer and a civil judicial officer. The District Judge is not the same as the Collector.

Mr. A. Sivarama Menon:—Sir, are you not going outside the province of the resolution.

Rama Varmha Tampuran:—May be.

Therefore, what I submit to this House is that there is nothing peculiar or strange or wonderful in the existing practice in the Cochin State. Whenever exigencies of service require, these transfers have to be done and the Government will be forced to do them.

Mr. A. Sivarama Menon:—I am afraid the Hon'ble Secretary to the Government has given rather a very clever turn to the discussion on the resolution by referring to the practice in British India in making appointments to the judiciary from the Munsiff up to the District Judge. That practice does not help us in any way to decide the question before the House. We are considering if it is right on principle to appoint a Chief Court Judge to the post of an Executive Officer and it is not relevant in this connection to examine the propriety of the method of either the recruitment of officers to the subordinate judiciary or of their transfer from the judicial to the executive line. The resolution in terms recommends that a member of the Chief Court Bench ought not to be appointed to a post in the executive line and the object underlying it is to

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preserve intact the independence and impartiality of the highest courts in the State. I am sure that neither the Mover of this resolution nor any responsible member of the House intends to cast any aspersion on the members of our judiciary who deservedly enjoy the utmost confidence of the public. What is aimed at by the resolution is to keep the Hon'ble Judges of the Chief Court above suspicion and the best way of doing it is to make it clear as is sought to be done by this resolution that Judges of the Chief Court will not under ordinary circumstances be considered as claimants to any further preferment or promotion having the effect of taking them away from the Chief Court Bench. A pertinent question was raised in the course of the discussion whether practical difficulties would not sometimes arise by a very strict observance of this rule. Here again, I am afraid there is an attempt to lay undue emphasis on the so-called rigidity of the rule. It is a well-known fact that every rule has its exception and this resolution does not purport to deal with exceptional cases. It provides for the normal case and lays down impliedly that it should not be considered proper to appoint a Chief Court Judge to an executive office except under special circumstances. I submit, Sir, that there is no need to fight shy of this proposition which enunciates a very healthy and desirable rule.

In this connection it may not be out of place to consider a similar agitation that took place in British India when the office of an Executive Councillor was thrown open to Indians by the Morley-Minto reforms. At that time this question became very important because some of the best Indians available for the office happened to be High Court Judges and yet the principle was definitely laid down that a High Court Judge is not ordinarily eligible to be appointed to the Executive Council. In spite of this we all know that there have been cases where a High Court Judge was selected as an Executive Councillor. For expramble Mr. Justice Krishnaswamy Ayyar was appointed as a Member of the Executive Council, Madras, and everybody at the time understood that appointment as one made not in assertion but in modification of the principle underlying the present resolution. I do hope the Hon'ble Law Member will find his way to accept the resolution after understanding its true nature and scope.

Mr. T. A. Ramachandra Ayyar:—The arguments brought forward by the other side are not at tall convincing. The independence of a Judge should not be in the ratio of the population or area of a place. If that is good for British India or any other Native State, it must be equally good for our State also. They must be above temptations. I have even heard of a certain Judge of the Chief Court remarking during the arguments of a case, "we are handi-

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capped in the decision of this case since His Highness happens to be a party".

President:—I don't think that arises in this discussion.

Mr T. A. Ramachandra Ayyar:—I beg to withdraw.

They must be independent to the core. To-day being the last, many of the Hon'ble Members of this side are seen absent and since the Government assured that only in exceptional cases they will make these appointments I beg to withdraw the resolution.

The resolution was, with leave, withdrawn.

The following resolution was considered withdrawn as the Mover was absent.

Mr. Paul P. Mampilly:—*This Council recommends to the Government that the practice of allowing the existing undergraduate clerks of the Huzur Secretariat to be superseded by the junior graduate clerks in the matter of promotions to the cadre of Superintendents be done away with".*

No 2. Cuts in the pay of Government Servants.

Mr. E. Ikkanda Warriar:—Sir, the resolution standing in my name runs thus:—"*This Council recommends to the Government to effect cuts in the pay of Government servants of the superior service at the following rates until the present economic depression is over. 5 per cent in the pay of those drawing up to Rs. 50 per month; 10 per cent in the pay of those drawing up to Rs. 150 per month; 15 per cent in the pay of those drawing up to Rs. 250 per month; 20 per cent in the pay of those drawing above Rs. 250 per month.*"

Sir, it is with feelings of a little diffidence that I am standing up before you for moving this resolution. But a sense of duty compels me all the more to press it and do my part by this resolution. It is admitted on all hands that the scales of pay obtained in our State are much higher than those obtained in other independent countries. I do not propose to go into the reasons of it or to discuss at length the reasons why the average pay of officers are generally higher than obtained in other countries. It may be due to the fact that the British Government were getting officers from outside and so they had to give them adequate and reasonable amount for making a living in a far off country and so they began the practice of giving high salaries to persons in service. When Indians were also begun to be drafted to the service and when they were found to do the work equally or even better than the foreigners they used to give them also the usual fat salaries. This may be a reason or it may not be the only reason. But it is not within the scope of this resolution to request the Government to reduce the pay of all the officers in proportion to the existing scale of pay obtained in other countries. My resolution stands upon an entirely independent footing and the reasons that promoted me to bring it is this.

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